# 25 COMMON QUESTIONS ON PROPOSED REGIONAL DISTRICT LEGISLATION

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MAJOR ISSUES

## 1. Do regional districts have a long term future?

Regional districts have now been with us for twenty odd years. During that time there has been an endless debate about their future. Strengthening, abolishing or radically reforming regional districts are options which have been considered at one time or another. Many are tiring of the constant debate and uncertainty. Nonetheless, the debate has been fruitful. After considerable review, it is apparent that regional districts are here to stay. They have an important role to play in the joint provision of services by two or more regional district members and in delivery of local services to rural areas. It is now generally recognized that the absence of regional districts would create a service vacuum that would be difficult, expensive, perhaps even impossible to fill. Regional districts indeed do have a long term future.

**2. If regional districts are a permanent part of the local government system, why the need for new legislation?**

Part 24 of the Municipal Act is essentially unchanged from the legislation which created regional districts in 1965. The legislation is deceptively short and simple. The reality is that Part 24 provides a complete legislative framework for a whole system of local governance, a system which is in fact quite complicated. While the overall concept of the regional district system has been found to be sound, 20 years of experience with the details of the legislation coupled with the growing maturity of the 28 regional districts leaves considerable scope for legislative improvement. The Ministry's mandate is to develop legislative proposals which will lead to more effective and efficient regional district operations.

**3. Isn't it time to develop a separate statute for regional districts?**

Having a separate statute for regional districts has long been considered, and was in fact considered right in the beginning in 1965. The advantage of a separate statute would be comprehensiveness: all matters of concern would be laid out in sequence, without the annoying cross-references now found in Part 24. The disadvantage is that the resulting statute would be about as long as the present Municipal Act.

Clearly, the duplication of much of the Municipal Act in a new Regional District Act is unnecessary. The present combination of municipal and regional district legislation within a single statute is workable. But the problems involved in this approach do need to be solved. The problems are particularly apparent in the realm of government and procedure, and various proposals are expected in this respect: a) procedures can be more self-contained in Part 24; b) cross-references can be more precise; and c) cross-references can be placed in context rather than assembled in one place -- s784 -- as at present. By so doing, more clarity and legal certainty can be created within Part 24, thus diminishing the need for an entirely separate regional district statute.

## 4. Why give regional districts statutory service powers?

It is proposed that regional districts be assigned a comprehensive set of service powers by statute. This is a significant departure. Originally few powers were assigned by statute and regional districts were expected to request powers from the Province region by region and service by service. The historic rationale for this approach was simple: there was no consensus on a standard set of RD powers in 1965 and there was not the desire to impose service obligations on the newly created regions. Instead, regional districts were invited to "write their own tickets" via letters patent.

But times have changed; what was suitable for the 1960's and 1970's is no longer necessarily the ideal today. The letters patent process is cumbersome, is inefficient and is consumptive of provincial and local resources. Furthermore, the regional district system has matured considerably. After twenty years it is possible to achieve consensus on a basic set of regional district service powers and to assign these powers by statute.

**5. But the statutory service powers seem unnecessarily limited. Why?**

The proposed list of statutory service powers contains about a dozen items, too few in the view of some. But careful reading of the list of statutory services reveals that it includes most items that would be considered to be at the centre of local government's jurisdiction. It is worth pointing out that more than 80% of the functional and specified area services actually managed by regional districts today would probably fall into the definition of statutory services proposed by the Ministry.

The mere fact that a proposed service -- such as economic development planning -- does not appear on the list of statutory services does not preclude a regional district from offering such a service. It does mean, however, that an RD would be required to request the assignment of the power by the provincial government. If approved, a Cabinet order assigning the requested power would be issued. The exercise of the power at this point would involve the adoption by the regional district of a standard establishment bylaw. Note that if history is used as a guide, fewer than one service proposal in five can be expected to require Cabinet authorization under the policy proposals advanced.

**6. One of the strengths of the regional district concept is flexibility. Will flexibility be preserved?**

Yes. Flexibility is one of the most valued features of the regional district system and ought to be retained. While regional districts most commonly would use a set of basic service powers assigned by statute, provision would be made for additional extraordinary service powers to be assigned by Cabinet order-in-council. These extraordinary powers would be granted if they are warranted by local conditions and consistent with provincial objectives. In addition, it is proposed to introduce a number of changes to enhance regional district corporate powers. When introduced, these changes should provide additional flexibility. Specifically, regional districts would have the power to do anything incidental or conducive to the exercise of any assigned power and the power to act as circumstances require in an emergency.

**7. Will regional districts keep their current service powers?**

Yes. The process for acquiring <u>new</u> services would be streamlined by the proposed legislation but all <u>existing</u> services would remain intact and, initially, would continue to be governed by the original SLP's or specified area bylaws, as the case may be. But two matters are of significance here. First, any regional district wishing to amend a specified area or SLP service would be permitted to do so under the rules of the proposed new legislation. Second, there will be cases where an existing service is defunct or no longer required. The legislation would provide an easy means for dismantling defunct services.

Over time, a gradual process of replacing old SLP's or bylaws with new establishment bylaws is anticipated. No time limits would be placed on the replacement process but most regional districts would probably find it in their interest to undertake a systematic programme for replacement. This would provide an opportunity to review each service and decide whether it is needed and whether financing provisions are appropriate for current circumstances.

**8. What would happen to letters patent?**

Letters patent would no longer be used as a means for the Province to delegate and for the regional district to exercise service powers. Under the legislation proposed, service powers would be granted: a) in the normal case by statute; or b) in special cases by order-in-council. All powers conferred on regional districts would be exercised under authority of "establishment bylaws". Letters patent, however, would still be necessary under the new scheme. Letters patent would be retained chiefly to:

- o establish the basic corporate structure of regional districts; and
- o establish the boundaries of a regional district and its constituent electoral areas.

In short, letters patent would persist as an essential instrument for regional district structure but would no longer be used for empowerment.

**9. Opting out of an established service is a problem. What is proposed?**

Opting out is just one example of the whole matter of establishment bylaw amendment. Once a service benefiting area is created, there would no doubt be a need to amend various particulars of the establishment bylaw from time to time. The amendment could be to add or delete a participating member, change the benefiting area boundary, change the fiscal framework or anything else. The amendments would vary in significance. Opting out is an example of a very significant kind of amendment while a minor boundary alteration could be considered relatively trivial. What is needed is a bylaw amendment process that is flexible: neither excessively rigid such that no amendment is possible nor excessively loose such that, for example, opting out could be accomplished without sufficient account being taken of possible implications.

The conditions precedent to establishment bylaw amendment should be related (but not identical) to the conditions precedent to the original adoption of the bylaw. Matters of voter assent, consent of participants and the vote on the question by the board are all significant. The proposals which will be advanced will be an attempt to strike a balance between extremes.

**10. Why has planning not been dealt with?**

The current legislative proposals do not deal with regional district control of physical development. The Ministry's mandate at this juncture is to develop proposals for modernizing and updating Part 24. With respect to planning, Bill 62 of 1985 introduced new and comprehensive provisions as Part 29 of the Municipal Act. Minor amendments to that legislation, to remedy problems identified in implementation, are being considered but independently of the regional district reform package. If necessary, policy questions such as consistency in voting rules will also be examined on a case by case basis. The objective will be to maintain harmony between Part 24 and Part 29.

**11. And what about hospital planning and financing?**

Hospital district legislation was introduced shortly after the original introduction of regional district legislation. The vehicle of the regional district was seen to be a viable means of regularizing local input into hospital planning and financing. This goal has been realized.

The mandate of the Ministry now is to modernize and update Part 24 of the Municipal Act, a task that is well underway. As a future task, an examination of the relationship between regional districts and regional hospital districts could be worthwhile. The views of regional officials on the relative urgency of such a review would be welcome.

ACCOUNTABILITY

**12. With the proposed new statutory service powers, are things be forced on taxpayers against their wishes?**

No. The assignment of statutory service powers to regional districts would not by itself enable regional districts to exercise assigned powers. To exercise a power, a regional district would first have to adopt a service establishment bylaw. The proposed legislation would clearly specify the procedures to be followed by a regional board in adopting a bylaw. These would include, in most cases, the requirement to obtain voter assent in electoral areas. The conditions precedent to establishment bylaw adoption are designed to make the whole process of service establishment more accountable to the voter.

Circumstances where the voter assent requirement is suspended will be more clearly defined in the proposed legislation. In general, it is felt that "local" services, such as water systems and fire protection, should be put to the vote (in electoral areas). On the other hand, "general or regulatory" services, such as nuisance regulation, should normally be entered into by board initiative, without voter assent. The proposed voter assent requirements are reasonably consistent with the voter assent requirements under the present law, but more options for obtaining voter assent are proposed.

**13. Should the decision to hold a pooled vote on a service establishment bylaw rest with the regional board?**

The pooled vote option (see s767(15) of the Act) has been available to regional districts since 1973. The pooled vote enables the designation of one, overall service benefiting area and the conduct of a referendum within that area. The pooled vote now requires a resolution from the regional board, backed up by Ministerial approval. The thinking in 1973 was that the pooled vote option was very necessary but that regional districts still required a degree of provincial supervision in exercising the option.

Regional districts have grown up and it is no longer considered necessary to send the pooled vote decision to Victoria for approval. This does not mean that all service establishment questions should be handled on a pooled vote basis, but it does mean that the option -- the decision -- should be in the hands of elected local representatives.

The pooled vote question is an important one, not to be taken lightly or used recklessly. But it should be available where it makes sense. To ensure the option is used wisely, it is proposed that the question be voted upon by the entire regional board (not just participants in the service) and be subject to a 2/3 majority. The one man one vote principle would be invoked because the issue is one requiring good political judgement moreso than equal representation.

**14. More voter accountability is wanted but referendums are expensive undertakings. What is proposed?**

Increasing the accountability of the board to local voters is one of our primary objectives. However, it is recognized that holding full-fledged referendums on service establishment questions can be awkward, expensive and time consuming. On large and important questions, the time and expense can be justified as simply the price of democracy. But on occasion, a simpler, less expensive means for obtaining voter assent is needed.

Two proposed options for obtaining voter assent are the mail ballot and the counter-petition. The **mail ballot** means mailing or delivering a ballot to all property owners in the benefiting area (a decision on the eligibility of owners not resident in B.C. is pending). A majority of owners receiving ballots must vote in favour, not just the majority of those returning ballots. This condition has been inserted deliberately and means that the mail ballot is best reserved for very simple services only and for situations where there are only a small number of property owners.

The **counter-petition** is simpler yet. It combines and modifies the current "initiative" provisions in the Municipal Act (sections 330 and 656). Under the counter-petition option, a board would be empowered to adopt an establishment bylaw given: a) the expiry of a statutory time period (perhaps 30 or 45 days); and b) the absence of a successful counter-petition (perhaps 5% or 10%) against the adoption of the bylaw. It is proposed that use of the counter-petition be restricted to "essential service" bylaws, specifically bylaws for sewer and water services. It is also proposed that clear and specific provisions be devised regarding the regional district's obligations for public notice, the circulation of information, preparation of counter-petition forms and so forth.

**15. The mail ballot may not work when a complicated service proposal is the issue. What is proposed?**

The mail ballot is not designed for "big issues". For these issues the referendum option is preferred. The mail ballot is designed as an inexpensive alternative to a full-fledged referendum. It is intended for simple service issues involving relatively small numbers of property owners and situations where consensus on an issue is relatively easy to achieve. It is not a favoured means for obtaining voter assent on more complex issues involving large numbers of property owners or electors.

RURAL SERVICES

**16. How will the local community concept be amended?**

An enhanced means of providing local services and political representation in rural areas is required. The current legislation offers the local community for this purpose. The local community was originally conceived as a "half-way house" preceding full municipalization. It provided for enhanced representation while capitalizing on the skill and experience of regional districts in service delivery. However, in retrospect, it has been concluded that existing legislation may be too restrictive and complex. This may have limited the application of the local community concept (currently there are only three local communities in existence).

The current legislative proposals are designed to make the concept more attractive to rural communities by: a) removing artificial restrictions on population, area, fiscal capacity and services; b) increasing its authority by enabling the assignment of full standing committee powers; c) preserving the local community's access to professional management from the regional district; and d) providing for periodic status review. In addition, and in response to suggestions received during the recent series of Regional District Forums, consideration is also being given to providing administration grants to local communities.

## 17. Who pays for the local community?

Under the proposed legislation, all regional district service powers would be exercised within an area known as a "benefiting area". For each service, there would be one benefiting area (and vice versa). Nothing, of course, would prevent a regional district from overlapping a number of benefiting areas to service a particular area. Indeed, when this occurs, the situation may be ideal for setting up a local community.

Once set up, the local community would serve as a vehicle for limited self-governance. The regional board would be empowered to delegate administrative responsibility for benefiting area services to the elected community commission, just as if the commission were a standing committee of the board. Bear in mind, however, that in all other respects the benefiting area services would remain part of the regional apparatus. This means that finance and cost recovery arrangements for services are unaffected by the creation of the local community.

The additional costs attributable to the creation of the local community are in the final analysis very minor, amounting mainly to: a) the cost of staging the elections to the commission; b) the cost of the honorarium and expense payments to commission members; and c) minor administrative expenses. The Ministry is considering the feasibility of providing administration grants to cover a portion of such costs. Any additional costs would be handled in the conventional fashion, that is charged as a general administration expense to the full regional tax base. But the major cost elements, the actual cost of services, would be charged to the benefiting area as if no local community existed.

**18. Are local communities intended to replace improvement districts?**

Not necessarily, although some existing improvement districts may see advantages to converting themselves to local communities. Provided suitable arrangements could be worked out between the improvement district and the "host" regional district -- transfer of assets and obligations, new cost recovery instruments, etc. -- the Ministry would encourage such conversion. It is stressed that the initiative for conversion would rest squarely in the hands of local people. Nothing would be compulsory about the conversion process.

With respect to the future, local communities would be expected to be considerably more prominent than is the case today. The local community would become truly a viable alternative to the improvement district. The local community would couple a substantial measure of local self-government with access to high quality management services from the regional district. The local community also offers the advantage of centralized provincial tax administration, which means full eligibility for the home owner grant. These features of the local community would no doubt make it an attractive option in the future.

**19. Won't the enhanced local community frustrate the goal of municipalization?**

No. The local community is not a substitute for municipalization. Specifically, it is not a solution for the serious governance problems of the large fringe areas of so many of our urban centres. The local community should be seen as a "half-way house" preceding municipalization. As such it is an appropriate solution for rural communities which are in transition. These communities may require full municipalization at a future date. Alternatively, it may be appropriate for them to maintain local community status for some time. In either case, to ensure that municipalization is not frustrated it is proposed that there be a compulsory, regularly scheduled status review for local communities. This would involve the Minister reviewing the status of the local community at five year intervals. If the levels of settlement development, service demand and desire for representation warrant municipalization, the Minister would be empowered to order a vote.

**20. Are new initiatives to encourage municipalization being considered?**

Yes. It is recognized that the proposed legislative changes for the local community do not answer the need for encouraging municipalization in many areas of the province. Many communities may not be aware of existing components of the Revenue Sharing Programme which are designed to encourage municipalization. Subject to the availability of funds these are:

- o grants from Transportation and Highways to cover road maintenance costs for the five years after incorporation;
- o grants to cover policing costs for the five years following incorporation; and
- o grants of up to $150 per capita to aid the transition to municipal status.

These programmes have been in place for many years but fiscal restraints of the past few years have restricted the amount of money available. However, this year the allocation of funds for transitional grants has increased from $3 million to $4 million. We recognize that these are not enough and we are reviewing our restructure programme to see how we can be more effective in encouraging necessary municipalization. One proposal being considered is a phasing in taxation of farm residences. Some notable successes have recently been made with the incorporation of new municipalities of Metchosin and Colwood and the major restructure of the Sechelt area.

OTHER MATTERS

**21. In practice, does the Inspector's review of establishment bylaws mean that Victoria would approve the establishment of all RD services?**

The Province would still have an approval role but the scope and level of approval would each change for the better. The assignment of a set of basic service delivery powers to regional districts would reduce provincial involvement, making the empowerment process tidier and more efficient. As matters stand today, a Cabinet order is usually necessary to obtain service powers. This can be awkward and is certainly time consuming. Moreover, provincial review of the establishment bylaws would be technical in nature, be undertaken by the Inspector of Municipalities and be limited to three areas of legitimate provincial interest: boundaries; debt creation and financial viability; and legality. Of these, only debt creation is expected to receive detailed provincial attention. These changes would not only considerably enhance local autonomy but also serve to regularize provincial intervention in local affairs.

**22. Will the proposed legislation address the restrictions and constraints which seem to confine administrative flexibility?**

Certainly. Regional district officials have never been accorded the same degree of breathing room in administrative matters as is enjoyed by their municipal counterparts. Originally this was justifiable. Regional districts were created out of thin air, so to speak. Given legitimate uncertainty about their administrative capability, the province deliberately attempted to keep regions "flying low to the ground".

Times have changed. Regional districts, on the whole, have matured and grown in capability and effectiveness over the two decades of their existence. Almost all regions have a proven track record in delivering services to residents. Regional districts have demonstrated an ability to take more responsibility for internal administration.

Several measures are being proposed. A full set of basic corporate powers is expected to be extended to regional districts. More flexibility in budgeting is proposed. Additional freedom to create reserve funds and accounts can be expected, as can the power to borrow capital on a short term basis. Less provincial supervision is proposed, which would be manifest in several ways. The opposite side of the coin is greater regional district autonomy in such areas as decisions on pooled voting. All these measures and more would deliver theadministrative flexibility required.

**23. Will the remuneration provisions in Part 24 be amended?**

Definitely. The current provisions in the Act are first of all unclear and second, too restrictive. As a result, the actual remuneration practices of many regional boards crept, over a number of years, further and further from the original intent of the law. In most cases, the divergence occurred quite innocently and resulted from the application of simple common sense to the remuneration question. In other words, it is the law, not the practice of most regional boards, which should be amended.

The policy proposals would provide for added flexibility tempered with accountability. The proposed legislation would provide for at least the following: a) additional remuneration for RD chairmen and vice-chairmen; b) additional remuneration for RHD chairmen; c) different remuneration for municipal directors and EA directors; d) remuneration for committee members; and e) clear direction concerning reimbursement for routine and extraordinary expenses. Regarding accountability, remuneration bylaws would be required to reveal with some certainty the annual receipts of regional officials for their service.

**24. Along with statutory authority for services, is any help on the way in terms of revenues?**

While new taxation authority is not being contemplated at this time, problems in the finance sphere are being addressed. A problem with the current legislation is that cost recovery options are not spelled out with precision. For the new legislation, it is proposed that a full array of cost recovery instruments be made available and be made available clearly. The array of instruments would include: a) the property tax requisition; b) frontage and parcel taxation; and c) fees and other charges.

In addition to cost recovery, attention is being given to cost sharing of services among participating members. Many instances have been noted around the province where unsatisfactory or unnecessarily rigid cost sharing arrangements have been negotiated. It is expected that the new legislation will provide fresh impetus to the search for fair cost sharing arrangements and will make the process for legally sanctioning such arrangements considerably easier. One hastens to add, with respect to cost sharing, that no amount of tinkering with legislation will correct cost sharing problems in the absence of a will on the part of local people to seek fair solutions. Good faith has always been at the core of the regional district concept, something which remains true today.

**25. Will more provincial government staff support be forthcoming?**

While not a matter of legislation strictly speaking, the enquiry is a fair one. Making a complicated system of governance work properly is not simply a question of getting the best possible legislative framework. Good legislation is necessary but is not by itself sufficient. In addition, the will to make the system work must be present. Open communication between levels of government is necessary. Adequate training for regional officials must be available. And provincial staff support is certainly required.

The current process of developing new legislation for regional districts has been open. Contributions from regional boards, regional staff and the UBCM have all been sought, and the best ideas received have been incorporated in the policy proposals advanced. It is to be hoped that the atmosphere of free exchange, debate and learning will persist.

On the specific question, criticism has in the past been directed at the Ministry for shortcomings in the area of provincial staff support. It is acknowledged that more support for regional districts is required, particularly once new legislation is introduced. The Ministry will be giving priority to this matter. One specific initiative may be to reintroduce annual or semi-annual meetings with RD administrators.